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Attorneys for Federal Defendant

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**THE SIERRA CLUB and ENVIRONMENTAL  
INTEGRITY PROJECT,**

Plaintiffs,

vs.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,**

Defendant.

Case No. C-3:11-0846-MEJ

**STIPULATION ON MEDIATION AND  
BRIEFING SCHEDULE AND  
~~PROPOSED~~ ORDER**

WHEREAS, this action, alleging violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, was filed on February 23, 2011; and

WHEREAS, the information request upon which this suit is based, sought information submitted to defendant relating to the operations of coal-fired power plants owned by the Luminant corporation; and

WHEREAS, as proposed by the Joint Case Management Conference Statement, dkt. # 15, the Court has established a schedule for dispositive briefing in this case. Dkt. # 16; and

WHEREAS, at the parties’ request, the Court has appointed mediator Daniel Bowling, to provide guidance for settlement discussions; and

WHEREAS, the parties have initiated a mediation process to informally resolve or narrow the issues in dispute before undertaking any further filings in this lawsuit; and

WHEREAS, the parties are mutually desirous of having the action stayed so that those efforts can continue;

NOW THEREFORE, the parties, through their respective counsel, do hereby stipulate and agree that on or before July 6, 2011, defendant EPA shall release to plaintiffs all documents responsive to their FOIA request for which the Luminant corporation has withdrawn claims that they are exempt from disclosure as confidential business information (“CBI”) under FOIA’s Exemption Four, 5 U.S.C. §552(b)(4) and for which the Agency has completed its review; and

IT IS FURTHER STIPULATED AND AGREED, that defendant EPA shall continue to release to plaintiffs all documents responsive to their FOIA request for which the Luminant corporation has withdrawn claims that they are exempt from disclosure as CBI, in a phased process as expeditiously as possible as the Agency completes its review, and that the parties anticipate the rate of release will approximate 1,600 pages every four weeks until the process is completed; and

IT IS FURTHER STIPULATED AND AGREED, that the parties will provide the Court with a

report addressing the status of their mediation efforts no later than October 1, 2011; and

IT IS FURTHER STIPULATED AND AGREED, that the Court may make and enter an order staying this case until the parties report to the Court on the status of their mediation efforts.

SO STIPULATED, this 24<sup>th</sup> day of June, 2011.

MELINDA HAAG  
United States Attorney

s/ David Bahr  
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s/Abraham Simmons  
ABRAHAM SIMMONS  
Assistant United States Attorney  
Attorneys for Federal Defendant

~~**PROPOSED**~~ ORDER

**It is so Ordered.**

The briefing schedule in this matter is vacated.

IT IS FURTHER ORDERED, on or before July 6, 2011, defendant EPA shall release to plaintiffs all documents responsive to their FOIA request for which the Luminant corporation has withdrawn claims that they are exempt from disclosure as confidential business information ("CBI") under FOIA's Exemption Four, 5 U.S.C. §552(b)(4) and for which the Agency has completed its review;

IT IS FURTHER ORDERED, that defendant EPA shall continue to release to plaintiffs all documents responsive to their FOIA request for which the Luminant corporation has withdrawn claims that they are exempt from disclosure as CBI, in a phased process as expeditiously as possible as the Agency completes its review, with the understanding that the approximate rate of release will average 1,600

1 pages every four weeks until the process is completed;

2 IT IS FURTHER ORDERED, that the parties will provide the Court with a report addressing the  
3 status of their mediation efforts no later than October 1, 2011; and

4 **IT IS SO ORDERED**, this 27<sup>th</sup> day of June, 2011.

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Maria-Elena James  
Chief United States Magistrate Judge